

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MUHAMMAD TAHSEEN AFZAL,

No. 2:20-cv-1615 DB P

Plaintiff,

v.

WENDY KAY,

ORDER AND

Defendant.

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and seeks relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

**I. Screening Requirement**

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

**II. Pleading Requirement**

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th

1 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
2 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
3 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
4 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
5 Cir. 1989); Franklin, 745 F.2d at 1227.

6 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon  
7 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in  
8 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467  
9 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt  
10 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under  
11 this standard, the court must accept as true the allegations of the complaint in question, Hosp.  
12 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light  
13 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v.  
14 McKeithen, 395 U.S. 411, 421 (1969).

15 **III. Discussion**

16 Plaintiff's complaint is written in a mostly illegible script and is difficult to comprehend.  
17 As best as the Court can determine, plaintiff brings this action against Wendy Kay, his ex-  
18 girlfriend, following his 2013 arrest on charges of criminal threats and assault with a deadly  
19 weapon, and his 2014 conviction thereon. Based on an attachment to the complaint<sup>1</sup>, Ms. Kay was  
20 the victim in the criminal action that underlies plaintiff's current term of incarceration. The claims  
21 that plaintiff asserts against Ms. Kay include, *inter alia*, false charges, wrongful arrest, perjury,  
22 and improper search and seizure.

23 "To state a claim under § 1983, a plaintiff must allege the violation of a right secured by  
24 the Constitution and laws of the United States, and must show that the alleged deprivation was  
25 committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48–49

26

27 \_\_\_\_\_  
28 <sup>1</sup> This attachment is an incomplete copy of plaintiff's opening brief on appeal to the California  
Court of Appeal, Third Appellate District, following his 2014 conviction. (ECF No. 1 at 18-29.)

1 (1988). Here, there is no suggestion that Ms. Kay was acting under color of state law at any  
2 relevant point and, therefore, a civil rights action cannot be maintained against her.

3 Furthermore, insofar as plaintiff seeks damages for an allegedly unconstitutional  
4 conviction or imprisonment, “a § 1983 plaintiff must prove that the conviction or sentence has  
5 been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal  
6 authorized to make such determination, or called into question by a federal court’s issuance of a  
7 writ of habeas corpus, 28 U.S.C. § 2254.” Heck v. Humphrey, 512 U.S. 477, 487-88 (1994). “A  
8 claim for damages bearing that relationship to a conviction or sentence that has not been so  
9 invalidated is not cognizable under § 1983.” Id. at 488; Nettles v. Grounds, 830 F.3d 922, 933  
10 (9th Cir. 2016) (en banc) (“[H]abeas corpus is the exclusive remedy to attack the legality of [a]  
11 conviction or sentence....”), cert. denied, — U.S. —, 137 S. Ct. 645 (2017). Examination of  
12 the Court’s docket reveals that plaintiff has already filed a petition for writ of habeas corpus  
13 regarding the same conviction at issue here, Afzal v. Kay, 2:20-cv-1614-AC, thus confirming that  
14 neither his conviction nor sentence has yet been reversed.

15 Finally, insofar as plaintiff seeks an earlier release based on Ms. Kay’s alleged  
16 improprieties, he is hereby informed that federal law opens two main avenues to relief on  
17 complaints related to imprisonment: a petition for habeas corpus and a civil rights complaint. See  
18 Muhammad v. Close, 540 U.S. 749, 750 (2004). “[H]abeas is the exclusive vehicle for claims  
19 brought by state prisoners that fall within the core of habeas corpus, and such claims may not be  
20 brought in a § 1983 [civil rights] action.” Nettles v. Grounds, 830 F.3d 922, 927 (9th Cir. 2016)  
21 (en banc). Nettles further sets forth “the correlative rule that a § 1983 action is the exclusive  
22 vehicle for claims brought by state prisoners that are not within the core of habeas corpus.” Id.  
23 That is, claims challenging “the fact or duration of the conviction or sentence” are within the core  
24 of habeas, while claims challenging “any other aspect of prison life” are properly brought as civil  
25 rights actions. Id. at 934. Any claim therefore that seeks his earlier release must be pursued in his  
26 habeas action.

27 ////

28 ////

1      **IV. Conclusion**

2            For the aforementioned reasons, plaintiff may not maintain a civil rights action against  
3 Wendy Kay. The undersigned finds that further amendment in this case would be futile. The  
4 Court is persuaded that plaintiff is unable to allege any facts, based upon the circumstances he  
5 challenges, that would state a cognizable claim. “A district court may deny leave to amend when  
6 amendment would be futile.” Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013); accord  
7 Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (“Courts are not required to grant leave to  
8 amend if a complaint lacks merit entirely.”).

9            Accordingly, IT IS HEREBY ORDERED that a district judge be assigned to this case; and

10            IT IS HEREBY RECOMMENDED that this action be dismissed with prejudice for failure  
11 to state a claim.

12            These Findings and Recommendations will be submitted to the United States District  
13 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
14 fourteen days after being served with these Findings and Recommendations, the parties may file  
15 written objections with the Court. The document should be captioned “Objections to Magistrate  
16 Judge’s Findings and Recommendations.” The parties are advised that failure to file objections  
17 within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772  
18 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

19            Dated: August 25, 2020



20  
21            DEBORAH BARNES  
22            UNITED STATES MAGISTRATE JUDGE  
23  
24  
25  
26  
27  
28

/DLB7;  
DB/Inbox/Substantive/afza1615.scrn